

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

17 Cr. 600 (NRB)

WILLIAM MCFARLAND,

Plea

Defendant.

New York, N.Y.
July 26, 2018
11:05 a.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

BY: KRISTY GREENBERG

Assistant United States Attorney

VLADECK RASKIN & CLARK

Attorneys for Defendant

BY: SUSAN J. WALSH

-and-

BOIES SCHILLER FLEXNER LLP

BY: RANDALL JACKSON

Also Present: Brandon Racz, FBI

1 (Case called)

2 MS. GREENBERG: Kristy Greenberg for the government.
3 With me at counsel table is FBI Special Agent Brandon Racz.
4 Good morning, your Honor.

5 THE COURT: Good morning.

6 MS. WALSH: Good morning, your Honor, I'm Susan Walsh.
7 I was assigned pursuant to the Criminal Justice Act in the
8 matter before Judge Furman. I filed a notice of appearance for
9 the purposes of today's proceedings and going forward. Present
10 with me also is Randall Jackson from Boies Schiller and, of
11 course, William McFarland.

12 THE COURT: Good morning.

13 Judging from the documents before me, Mr. McFarland is
14 going to waive indictment on the S2 charges and enter a plea of
15 guilty. Is that correct?

16 MS. GREENBERG: That's my understanding, your Honor,
17 yes.

18 MS. WALSH: Yes, your Honor, that is correct.

19 THE COURT: Mr. McFarland, may I ask you to stand for
20 a moment, please.

21 (Defendant sworn)

22 THE COURT: Would you state your full name for me,
23 please.

24 THE DEFENDANT: William McFarland.

25 THE COURT: Mr. McFarland, how old are you, please.

1 THE DEFENDANT: Twenty-six.

2 THE COURT: What is the highest level in school that
3 you completed?

4 THE DEFENDANT: High school.

5 THE COURT: And are you now or have you recently been
6 under the care of a doctor or mental health professional?

7 THE DEFENDANT: No, I haven't, your Honor.

8 THE COURT: Why don't you sit down.

9 Have you ever been hospitalized or treated for
10 alcoholism or narcotics addiction?

11 THE DEFENDANT: No, I have not, your Honor.

12 THE COURT: Are you under the influence of any drug or
13 alcohol today?

14 THE DEFENDANT: No, I'm not.

15 THE COURT: How are you feeling physically today?

16 THE DEFENDANT: Physically I'm fine.

17 THE COURT: Have you signed a waiver of indictment?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: And before you signed the waiver of
20 indictment, did you discuss it with your counsel?

21 THE DEFENDANT: Yes, I discussed it, your Honor.

22 THE COURT: And did she explain to you that you are
23 under no obligation to waive indictment?

24 THE DEFENDANT: Yes, she did, your Honor.

25 THE COURT: Do you understand that if you did not

1 waive indictment and the government wanted to prosecute you
2 that they would have to present your case to a grand jury,
3 which might or might not indict you on these particular
4 charges?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And do you realize that by signing this
7 waiver of indictment that you have given up your right to have
8 these charges presented to a grand jury?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And have you seen a copy of the
11 information, the S2 information?

12 THE DEFENDANT: Yes. I read the information.

13 THE COURT: And would you like me to read it out loud
14 or do you waive its public reading?

15 THE DEFENDANT: I'd like to waive the reading, your
16 Honor.

17 THE COURT: Have you had sufficient time to discuss
18 the charges in the information and your plea with your counsel?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And have you been satisfied with the
21 advice and counsel that you have received from Ms. Walsh?

22 THE DEFENDANT: Yes, I'm satisfied with counsel.

23 THE COURT: And are you ready to enter a plea at this
24 time?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: What is your plea, guilty or not guilty?

2 THE DEFENDANT: I plead guilty, your Honor.

3 THE COURT: Mr. McFarland, in order to determine
4 whether your plea is voluntary and made with a full
5 understanding of the charges against you and the consequences
6 of your plea, I will make certain statements to you and I am
7 going to ask you certain questions. I want you to understand
8 that I need not accept your plea unless I am satisfied that you
9 are in fact guilty and that you fully understand your rights.

10 As you know, you previously pled guilty before me to
11 Counts One and Two of the S1 superseding information. It is a
12 part of your plea agreement with the government that you agree
13 not to withdraw your previously entered plea to those two
14 counts and affirm your guilty plea once again to the Counts One
15 and Two of the S1 information. Are you prepared to do so?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And do you do so?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Count One of the S2 information charges
20 you with committing wire fraud while you were on pretrial
21 release from in or about late 2017 up to and including at least
22 in or about March 2018. This crime carries a maximum possible
23 term of imprisonment of 30 years, a maximum term of supervised
24 release of three years, a maximum fine of the greatest of
25 \$250,000 or twice the gross pecuniary gain derived from the

1 offense or twice the gross pecuniary loss to persons other than
2 yourself as a result of the offense, and a \$100 mandatory
3 special assessment.

4 Do you understand that that is the charge in Count One
5 of the S2 information and the maximum penalties applicable to
6 that charge?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Count Two of the S2 information charges
9 you with committing bank fraud while on pretrial release in or
10 about March 2018, and this crime carries a maximum term of
11 imprisonment of 40 years, a maximum term of supervised release
12 of five years, a maximum fine of the greatest of \$1 million or
13 twice the gross monetary gain derived from the offense or twice
14 the gross monetary loss to a person other than yourself as a
15 result of the offense, and a \$100 mandatory special assessment.

16 Do you understand that is the charge in Count Two and
17 the maximum possible penalties applicable to that charge?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: And Count Three charges you with making
20 materially false statements to a federal law enforcement agent
21 on or about June 20, 2018, and this crime carries a maximum
22 possible imprisonment of five years, a maximum term of three
23 years of supervised release, a maximum fine of the greatest of
24 \$250,000 or twice the gross pecuniary gain derived from the
25 offense or twice the gross pecuniary loss to a person other

1 than yourself as a result of the offense, and a mandatory \$100
2 special assessment.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that in consideration
6 for your plea to the five offenses between the two informations
7 that the government has agreed not to prosecute you further for
8 a list of crimes that starts on the bottom of page 2 of your
9 plea agreement that continues through the continuation
10 paragraph on page 3?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you further understand that under the
13 plea agreement that the conduct described in (b)(i) in the
14 paragraph that we were just talking about is to be considered
15 relevant conduct that may be considered at the time of
16 sentencing?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And do you understand that it is part of
19 your plea agreement to admit the forfeiture allegations with
20 respect to Counts One and Two of the S1 information and Count
21 One of the S2 information and to forfeit a sum of money equal
22 to \$26,440,099.48?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: I probably read that wrong. I take that
25 back. Sorry. It's a big number. It may be correct.

1 MS. WALSH: I think you said 400,000.

2 THE COURT: Instead of 40,000. Sorry. Thank you.

3 And also \$151,206.80, Mr. McFarland.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: That's an additional forfeiture amount.

6 Do you understand that?

7 THE DEFENDANT: I understand, your Honor.

8 THE COURT: Mr. McFarland, do you understand that you
9 have the right to plead not guilty and the right to a trial on
10 the charges against you and in fact the right to a jury trial?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Also, I forgot to mention it, do you
13 understand that you have also agreed to make restitution as
14 part of your plea agreement?

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: And at this time I would ask the
17 government, please, to recite the elements of the crimes
18 charged.

19 MS. GREENBERG: Yes, your Honor.

20 With respect to the first count of wire fraud, the
21 first element is that there was a scheme or an artifice to
22 defraud or to obtain money or property by materially false and
23 fraudulent pretenses, representations, or promises.

24 The second element is that the defendant knowingly and
25 willfully participated in the scheme or artifice to defraud

1 with knowledge of its fraudulent nature and with specific
2 intent to defraud or that he knowingly and intentionally aided
3 and abetted others in the scheme.

4 The third element is that in execution of that scheme
5 the defendant used or caused the use of an interstate or
6 international wire communication.

7 And, lastly, there is an additional element here under
8 Title 18, United States Code, Section 3147 for the defendant
9 committing an offense while on pretrial release pursuant to the
10 Bail Reform Act of 1966 and that he had notice of the effect of
11 committing an offense while on pretrial release.

12 For Count Two, bank fraud count, the first element is
13 that there was a scheme to defraud a bank or a scheme to obtain
14 money or funds owned or under the custody or control of a bank
15 by means of materially false or fraudulent pretenses,
16 representations, or promises.

17 The Second element is that the defendant executed or
18 attempted to execute the scheme with the intent to defraud the
19 bank or that he knowingly and intentionally aided and abetted
20 others in the scheme with the intent to defraud the bank.

21 The third element is that the bank was then insured by
22 the Federal Deposit Insurance Corporation and, again, there is
23 the additional element here that the defendant committed the
24 offense while on pretrial release, pursuant to the Bail Reform
25 Act of 1966, and that he had notice of the effect of committing

that offense while on pretrial release.

Count Three, the charge for making false statements. The elements are: First, that the defendant made a false statement; second, that the statement was material; third, that the defendant acted knowingly and willfully; and, fourth, that the false statement was made with respect to a matter within the jurisdiction of the government of the United States.

THE COURT: Mr. McFarland, do you understand that if you pled not guilty and went to trial that the burden would be on the government to prove each and every element of the crimes charged beyond a reasonable doubt in order to convict you?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Do you understand that at a trial you would have the right to be represented by an attorney at all stages of the proceeding and, if necessary, an attorney would be appointed for you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you understand that at a trial you would have the right to confront and cross-examine witnesses against you and the right not to be compelled to incriminate yourself?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Do you understand that at a trial you would be presumed innocent until such time, if ever, the government established your guilt by competent evidence to the

1 satisfaction of the trier of fact beyond a reasonable doubt?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you understand that at a trial you
4 would have the right to testify and would also be entitled to
5 compulsory process, in other words, the right to call other
6 witnesses on your own behalf?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And do you understand that if your plea is
9 accepted that there will be no further trial of any kind so
10 that by pleading guilty you are waiving your right to a trial?

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: And do you understand that if you are
13 sentenced to a period of supervised release and if you violate
14 the terms of your supervised release, that an additional period
15 of jail time may be imposed without credit for the time that
16 you had previously spent on supervised release?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand that in connection with
19 your plea of guilty that the Court may ask you certain
20 questions about the offenses to which you have pled. And if
21 you answer those questions under oath and on the record and in
22 the presence of your counsel that your answers, if false, may
23 later be used against you in a prosecution for perjury or false
24 statement?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. McFarland, what country are you a
2 citizen of?

3 THE DEFENDANT: The United States of America.

4 THE COURT: Mr. McFarland, did you sign a plea
5 agreement earlier today?

6 THE DEFENDANT: Yes, I did, your Honor.

7 THE COURT: And before you signed it, did you discuss
8 it with your lawyer?

9 THE DEFENDANT: Yes.

10 THE COURT: Before you signed it, did you read it?

11 THE DEFENDANT: Yes.

12 THE COURT: Separate and apart from your plea
13 agreement, have any threats or promises been made to you to
14 make you plead guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Again, separate and apart from your plea
17 agreement, have any understandings or promises been made to you
18 concerning the sentence that you will receive?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Is your plea voluntary, in other words, of
21 your own free will?

22 THE DEFENDANT: Yes, it is.

23 THE COURT: I'd like to review some portions of the
24 plea agreement with you. Do you understand that the plea
25 agreement contains a stipulated guidelines range and that range

1 is from 135 to 168 months?

2 Do you understand that the sentence of imprisonment
3 imposed under 18 U.S.C. 3147 must run consecutively to any
4 other sentence of imprisonment?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that the applicable
7 fine range in your case is from 35,000 to \$1 million?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that under the plea
10 agreement that the parties have agreed that neither a downward
11 nor an upward departure from the stipulated guidelines range is
12 appropriate?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you also understand that all parties
15 are free to seek a sentence outside of the stipulated
16 guidelines range?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And do you understand that neither the
19 probation office nor the Court is bound by the guidelines
20 stipulation and that the sentence to be imposed upon you is
21 determined solely by the Court?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And do you understand that if you receive
24 a sentence within the stipulated guidelines range that you have
25 agreed not to file an appeal or otherwise challenge

1 collaterally the sentence imposed?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Are you pleading guilty because you are in
4 fact guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And do you understand that this plea
7 agreement does not bind any other prosecuting authority,
8 federal, state, or local, other than the United States
9 Attorney's Office for the Southern District of New York?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And do you understand that other than any
12 possible written proffer agreement that you may have entered
13 into that this agreement takes the place of any prior agreement
14 with the United States Attorney's Office and that no additional
15 understandings have been entered into other than those actually
16 set forth in the agreement and that none will be entered into
17 unless they are in writing and signed by all parties?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Mr. McFarland, did you commit the offenses
20 charged in just the S1 indictment that you previously pled
21 guilty to?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Just focusing now on the S2, S2
24 information, did you commit those offenses?

25 THE DEFENDANT: Yes, I did, your Honor.

1 THE COURT: Would you tell me, please, what you did.

2 THE DEFENDANT: Yes, your Honor.

3 Between December of 2017 and March of 2018, while I
4 was on pretrial release, I sold tickets to special events when
5 I in fact did not have those tickets in hand, and the selling
6 of those tickets caused money to be wired within Manhattan.

7 On March of 2018, while I was also on pretrial
8 release, I wrote a check that I was not specifically authorized
9 to write, and I gave that check to a person knowing that they
10 would deposit it at a bank.

11 Finally, in June of 2018, when I met with federal law
12 enforcement officials to discuss these matters, I lied, denying
13 any wrongdoing.

14 I know this is wrong, and I know I broke the law.

15 THE COURT: I don't necessarily recall if I heard it,
16 but did you commit these various crimes within the Southern
17 District of New York, which includes Manhattan?

18 THE DEFENDANT: Yes. I committed the three offenses
19 in the Southern District of New York.

20 THE COURT: Ms. Greenberg, is there anything else that
21 you would like me to ask?

22 MS. GREENBERG: Yes, your Honor. With respect to the
23 wire fraud count, Count One, can you ask whether or not when he
24 was selling the tickets that he did not have in hand that he
25 did so with an intent to defraud those customers? And then

1 with respect --

2 THE COURT: Let's just stop there and ask
3 Mr. McFarland, can you answer that question?

4 THE DEFENDANT: I sold the tickets with the intent to
5 defraud, yes.

6 MS. GREENBERG: And then with respect to Count Three,
7 I believe he allocuted that he denied wrongdoing, but can you
8 ask him whether or not he affirmatively made material false
9 statements about the ticket sales and the check?

10 THE COURT: Could you answer that question.

11 THE DEFENDANT: I made false statements about the
12 ticket sales and the check.

13 MS. GREENBERG: I would just have a proffer with
14 respect to Count One, the wire fraud count, that the wires that
15 were made to purchase the tickets, among them were interstate
16 wires. In particular, there was one victim customer who was
17 from Florida who purchased tickets to the Grammy Awards and
18 wired money into a bank account in Queens, New York.

19 I believe he already proffered venue as to all three
20 counts. I would say with respect to Count One that there were
21 victims that were receiving and sending their wire transfers
22 from the Southern District of New York in Manhattan.

23 With respect to Count Two, the bank in which the check
24 was going to be deposited was insured by the FDIC, and the
25 check was provided by Mr. McFarland to an individual in

1 Manhattan. That is how we would establish venue.

2 I would proffer as to Count Three that the false
3 statements made by Mr. McFarland on June 20, 2018 to an FBI
4 agent were about matters under federal criminal prosecution and
5 investigation by the Federal Bureau of Investigation. That
6 meeting happened in Manhattan.

7 THE COURT: Mr. McFarland, do you still wish to plead
8 guilty?

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: Ms. Walsh, do you know of any reason why
11 Mr. McFarland should not plead guilty?

12 MS. WALSH: I do not, your Honor.

13 THE COURT: Mr. Jackson, do you know of any reason why
14 Mr. Walsh should not reaffirm his earlier plea of guilty to
15 Counts One and Two of the S1?

16 MR. JACKSON: No, your Honor.

17 MS. WALSH: I think you mean Mr. McFarland, not
18 Mr. Walsh.

19 THE COURT: Did I --

20 MS. WALSH: It's OK. It happens to me all the time.

21 THE COURT: Does it really?

22 MS. WALSH: All the time, yeah.

23 THE COURT: I'm really sorry.

24 Let me try it again.

25 MS. WALSH: Thank you, Judge.

1 THE COURT: I really apologize.

2 Mr. Jackson, do you know of any reason that
3 Mr. McFarland should not reaffirm his guilty plea to Counts One
4 and Two of the S1 information?

5 MR. JACKSON: No, your Honor.

6 THE COURT: Mr. McFarland, the Court is satisfied that
7 you understand the nature of the charge against you and the
8 consequences of your pleas and that your plea is made voluntary
9 and knowingly and that there is a factual basis for it.
10 Accordingly, I will accept your plea of guilty and direct that
11 a presentence report be prepared.

12 I think we need to set a sentencing date, and I think
13 counsel proposed some, and I think one of those works for us.

14 We would propose sentencing on September 17 at 3:30
15 with defense submission being due September 7 and the
16 government's on September 12.

17 Is that OK?

18 MS. WALSH: That is OK, your Honor.

19 MS. GREENBERG: Yes, that's fine.

20 THE COURT: Is there anything else at this time?

21 MS. GREENBERG: Nothing from the government.

22 MS. WALSH: No, your Honor. Thank you.

23 MR. JACKSON: Thank you, your Honor. Nothing else.

24 THE COURT: Thank you very much.

25 Ms. Greenberg, given the plea, are you just going to

1 nolle the indictment that was originally assigned to Judge
2 Furman?

3 MS. GREENBERG: I don't think the process would be to
4 nolle it. I think at the time of sentencing we would just move
5 to dismiss those counts to that indictment.

6 THE COURT: We still have to close it on his docket.
7 He and I agreed that I should handle both parts of the
8 case. That's not an issue. I am just thinking about the sort
9 of practical -- we will have the indictment transferred here
10 and then at sentencing you will move to dismiss those counts.

11 MS. GREENBERG: That makes sense to me, your Honor.

12 THE COURT: We will take care of that.

13 MS. GREENBERG: Thank you very much.

14 MS. WALSH: Thank you.

15 (Adjourned)